Court No.2

IN THE HIGH COURT OF UTTARANCAHAL AT NAINITAL.

Writ Petition No. 3043 (S/S) of 2001

State of U.P. through Executive Engineer,
Upper Ganga Canal Modernization,
Division- 4, Hardwar

..... Petitioner

Versus

1. Presiding Officer, Labour Court, Dehradun
2. Shri Brij Pal Singh S/o Shri Pitambar Singh,
   C/o Shri B.D. Tyagi, 16-A, Rajpur Road, Dehradun

..... Respondents.

WITH

WRIT PETITION NO. 840 (S/S) OF 2001

Shri Brij Pal Singh S/o Shri Pitamber Singh
R/o Village Daula P.O. Daula, Tehsil Baraut,
District Bagpat (Old Meerut) employed as Work
Supervisor in Upper Ganga Modernization Division-3
Now 9 Canal, Vishwa Bank (Roorkee, Distt. Hardwar)
(Previously Saharanpur)

..... Petitioner

Versus

1. Prescribed Authority, Labour Court, Dehradun
2. Executive Engineer, Upper Ganga Canal Modernization
   Vishwa Banka Khand-4, Roorkee, Hardwar
3. Superintending Engineer, Upari Ganga Nahar
   Modernization, Vishwa Bank Circle-1, Roorkee, Hardwar

..... Respondents.

Learned standing counsel for the petitioner.
Shri Lokpal Singh, learned counsel for Respondent No.2/workman.

Dated: 09.08.2005

Hon'ble P.C. Verma, J.

This writ petition has been filed by the petitioner-seeking writ of Certiorari quashing the impugned judgment and award dated 13.07.2000 passed by Presiding Officer, Labour Court, Dehradun in Reference Case No.283 of 1999 whereby the learned labour court has directed the petitioner

to reinstate Respondent No.2 in the service with Rs. 7,500/- towards compensation in lieu of back wages.

2. The brief facts of the case are that the Respondent No.2 was appointed on 10.09.1991 on daily wage basis with the petitioner's establishment. He worked as such till 10.09.1991 and through Muster Roll he did work regularly upto 31.05.1992 and he was illegally retrenched from duty from 10.06.1992. Feeling aggrieved, the Respondent No.2 referred the following dispute before the Respondent No.1:-

"Whether the termination of the services of the applicant/workman Shri Brijpal Singh S/o Shri Pitambar by the employers from 01.06.1992 is justified and/ or legal? If no, to which benefit/ compensation the applicant/workman is entitled and to what extent?"

3. Upon hearing the reference, the learned labour court issued notices to the parties to lead their oral as well as documentary evidence. Both the parties filed their written statement/objections. The labour court after considering the entire evidence on record held the termination of services of Respondent No.2 by the employers' w.e.f. 01.06.1992 to be illegal and unjustified and ordered for reinstatement with Rs.7,500/- as compensation in lieu of back wages.

4. I have heard learned counsel for the petitioner and perused the entire evidence on record.

5. Admittedly, the Respondent No.2 has worked in the petitioner's establishment from September, 1991 upto April, 1992 and according the Muster Roll submitted by the workman, he worked for 229 days and the main question before the learned Tribunal as to whether the employee has worked in the month of May, 1992. The learned Tribunal has recorded a finding that since the employers' did not produce the Corbetch Counting Register, it was assumed that there are positive entries in the register in the favour of petitioner and therefore, it was held that the concerned workman has also worked in the month of May, 1992.

Therefore, the learned Tribunal held that since the workman had completed 240 days in the calendar year, he was deemed to be in continuous service and hence his termination in violation of Section 6-N of the U.P. Industrial Disputes Act, 1947 was illegal and ordered for reinstatement. On the other hand, the Respondent No.2 as wall as the Labour Court relied on the case of the Apex Court in the case ***State of U.P. and another Vs. Rajendra Singh Buotal and another,*** *reported in 2000 (84) FLR 896* in which the Hon'ble Supreme Court observed that ***in the light of the concurrent findings of fact reached by the trial court as well as by the High Court, it becomes clear that thought the appellants contended that the workman was a daily wager and therefore, the provision of Section 6-N of the U.P. Industrial Disputes Act did not apply. There is no escape from the conclusion that the workman had worked for four years as clearly established and if he was to be terminated due to any exigencies of service, the procedure for retrenchment was required to be followed. As the condition precedent to such retrenchment was not complied with, the order of reinstatement granted by the Labour Court could not be found fault with.***

6. In view of the aforesaid law laid down by the Apex Court, the Labour Court rightly held that the respondent was terminated without applying the procedure for retrenchment and the same was in violation of provisions of Section 6-N of the U.P. Industrial Disputes Act.

7. Learned counsel for the petitioner has further argued that the claim petition has been filed after a period of seven years and, as such, the same is not maintainable as it is highly belated. The Apex Court in case of **"Sapan Kumar Pandit Vs U.P. State Electricity Board & others reported in {2001 SC-SLR 658}"**, has held as under:

> ***"It is useful to refer to three Judges Bench decision of this Court as it related to the scope of***

the very same provision i.e. Section 4-K of the U.P. Act. In M/s Western India Watch Co. Ltd. Vs the Western India Watch Co. Workers Union, AIR 1970 SC 1205, learned Judges made the following observations:

"Therefore, the expression 'at any time', though seemingly without any limits, is governed by the context in which it appears. Ordinarily, the question of making a reference would arise after conciliation proceedings have been gone through and the conciliation officer has made a failure report. But the Government need not wait until such a procedure has been completed. In an urgent case, it can 'at any time', i.e. even when such proceedings have not begun or are still pending, decide to refer the dispute for adjudication. The expression 'at any time' thus takes in such cases as where the Government decides to make a reference without waiting for conciliation proceedings to begin or to be completed. As already stated, the expression 'at any time' in the context in which it is used postulates that a reference can only be made if an industrial dispute exists or is apprehended. No reference is contemplated by the section when the dispute is not an industrial dispute, or even if it is so, it no longer exists or is not apprehended, for instance, where it is already adjourned or in respect of which there is an agreement or a settlement between the parties or where the industry in question is no longer in existence."

8. In my opinion, the Labour Court has rightly moulded the award to the extent of Rs.7,500/- towards compensation in lieu of back wages to the Respondent No.2 on account of the delay in filing the claim petition and the finding on this point requires no interference under Article 226 of the Constitution of India.

9. In view of the findings recorded above, I do not find any perversity or illegality the impugned award. The findings recorded by the Labour Court are findings of fact and this Court, therefore, in exercise of powers under Section 226 of the Constitution of India, declines to interfere with the findings recorded by the Labour Court.

10. The writ petition is devoid of merit and is dismissed as such. No order as to costs.

11. Consequently, the writ petition No.840 of 2001 which was filed against the same impugned order by the petitioner shall stand dismissed.

(P.C. Verma, J.)

Rajeev Dang